

**[PROPOSED] ORDER DENYING MOTION TO DIRECT ENTRY OF FINAL
JUDGMENT AND CERTIFY FOR IMMEDIATE APPEAL**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

**[PROPOSED] ORDER DENYING MOTION TO DIRECT ENTRY OF FINAL
JUDGMENT AND CERTIFY FOR IMMEDIATE APPEAL**

On October 11, 2013, Defendants J. Ezra Merkin and Gabriel Capital Corporation (the “Merkin Defendants”), Ariel Fund Ltd. (“Ariel”), Gabriel Capital L.P. (“Gabriel”), and Ascot Partners (“Ascot”) filed three motions, ECF Nos. 160, 164, 168, and memoranda and declarations in support, ECF Nos. 161, 162, 166, 167, 169, to dismiss the third amended complaint (“Third Amended Complaint”) of Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment

Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff, individually, filed on August 30, 2014. EFC No. 151.

The Trustee opposed the motions to dismiss on November 15, 2013. ECF No. 173. On December 20, 2013, the Merkin Defendants, Ariel, Gabriel, and Ascot filed replies and a declaration in support of their respective motions to dismiss. ECF Nos. 185, 186, 187, 188.

On December 20, 2013, Defendant Ascot Fund Ltd. (“Ascot Fund”) filed its motion to dismiss the Third Amended Complaint and a declaration and memorandum of law in support (together, with the prior motions to dismiss, the “Motions to Dismiss”). ECF Nos. 182, 183, 184. On December 23, 2013, the Court entered a stipulation between the Trustee and Ascot Fund ordering the dismissal of Counts One through Eight of the Third Amended Complaint only insofar as they seek recovery of Initial Transfers from Ascot Fund. ECF No. 189. On January 31, 2014, the Trustee filed an opposition to Ascot Fund’s motion to dismiss and a supporting declaration. ECF Nos. 198, 199. On February 28, 2014, Ascot Fund filed its reply and declaration in support of its motion to dismiss. ECF Nos. 205, 206.

On April 30, 2014, the Motions to Dismiss were heard by the Honorable Stuart M. Bernstein. On August 12, 2014, the Court entered a Memorandum Decision Granting in Part and Denying in Part Defendants’ Motion to Dismiss (the “Decision”), ECF No. 212, that: (1) dismissed Count One, preferential transfers against Ascot; (2) dismissed Count Three, Two-Year Constructive Fraudulent Transfers against Gabriel, Ariel, and Ascot; (3) dismissed Counts Four through Eight, Six-Year Fraudulent Transfers against Gabriel, Ariel, and Ascot; (4) dismissed Count Eleven, Disallowance; (5) dismissed Count Twelve, Equitable Disallowance; (6) sustained Count Two, Two-Year Actual Fraudulent Transfers; (7) sustained Count Nine, Subsequent Transfers; (8) sustained Count Ten, General Partner Liability; and (11) sustained Count Thirteen,

Equitable Subordination. On August 14 and 20, 2014, the Court issued two errata orders. ECF Nos. 213, 215.

On September 5, 2014, the Trustee moved for: (1) certification pursuant to Federal Rule of Civil Procedure 54(b), made applicable to this adversary proceeding by Rule 7054 of the Federal Rules of Bankruptcy Procedure, for entry of final judgment on Counts One, Three, Four, Five, Six, Seven, and Eight; and (2) certification of the portions of this Order directing entry of final judgment for immediate appeal to the United States Court of Appeals under 28 U.S.C. § 158(d)(2). ECF No. 227. The defendants opposed the Trustee's motion. ECF Nos. 230, 231. On October 2, 2014, oral argument was held before this Court. On December 4, 2014, the Court issued the Memorandum Decision Denying the Trustee's Motion For Entry of Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b) and Certification for Direct Appeal Under 28 U.S.C. § 158(d). ECF No. 246

For the reasons set forth in the Court's December 4, 2014 Decision, which is incorporated herein and made a part hereof, it is hereby **ORDERED** that the Trustee's motion for entry of partial final judgment under Rule 54(b) is denied and the request for certification is denied as moot.

Dated: December ___, 2014
New York, New York

HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE